OFFICE OF THE COMMISSIONER OF POLICE : DELHI

CIRCULAR

No. 08 /2015

Subject: Regarding invoking the provision of Sec. 156(3) Cr.P.C.

The Hon'ble Supreme Court of India, while deciding Criminal Appeal No.781 of 2012 titled Mrs. Priyanka Srivastava and Another Vs. State of UP and Others, has commented in detail over the aspect of invoking of the provision of Sec. 156(3) Cr.P.C. and made the following observations :-

1. The trial magistrate will order for the registration of FIR with proper application of mind and after ascertaining true facts. The direction to police to register FIR on complaints filed u/s 156(3) Cr.P.C. or directing enquiry, creates a very unhealthy situation in the society and also reflects the erroneous approach of the magistrate. This also encourages the unscrupulous and unprincipled litigants to file complaints to harass certain persons.

2. The complainants will have to file an affidavit in support of their allegations duly sworn by the applicant, who seeks the invocation of the jurisdiction of the magistrate u/s 156(3) Cr.P.C. It is because "once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate u/s 156(3) Cr.P.C."

3. In appropriate cases, the magistrate would be well advised to verify the truth and also can verity the veracity of the allegations as such kind of applications are being filed without taking any responsibility whatsoever only to harass certain persons and this affidavit can make the applicants more responsible.

4. No one can be allowed to settle his scores in a criminal court by taking undue advantage of the provision of Section 156(3) Cr.P.C. The Apex Court indicated that there has to be prior application under Section 154(1) and 154(3) Cr.P.C. while filing a petition under Section 156(3) Cr.P.C. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed with the application. The warrant for giving a direction that an application under Section 156(3) Cr.P.C. be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made.

5. The Hon'ble Supreme Court of India discussed the judgement delivered in case of Lalita Kumari Vs. State of U.P. and reflected as to what type

and in which case preliminary inquiry is to be conducted, will depend on the facts and circumstance of each case. The category of cases in which preliminary inquiry may be made are as under:-

(a) Matrimonial disputes/family disputes.
(b) Commercial offences.
(c) Medical negligence cases.
(d) Corruption cases.
(e) Cases where there is an abnormal delay/laches in initiating criminal prosecution for example over 3 month's delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

6. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made in time-bound manner and in any case it should not exceed 15 days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the Daily Diary by making an entry.

7. No specific time limit has been fixed by the Hon'ble Apex Court for conducting enquiry into the complaints filed u/s 156(3) Cr.P.C.

It is, therefore, emphasized upon all concerned that the above mentioned observation of the Hon'ble Apex Court should be kept in mind while dealing with the complaints filed u/s 156(3) Cr.P.C. and the observation pertaining to the police should be complied with meticulously.

(ARUN KAMPANI)
ADDL. COMMISSIONER OF POLICE
LEGAL CELL, PHQ, DELHI

No.818-968 /Record Branch/PHQ dated, Delhi, the 27/04/2015

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